If a person dies intestate without selecting an executor, the court chooses an administrator to settle the estate. The administrator may be less knowledgeable and less able to bring consensus among family members than an executor appointed by a will.

Many people assume that they don't have enough property to justify making a will. If the courts decide how your estate will be settled, the neediest beneficiaries may not get all they need because of intestate succession rules. Attempting to avoid these issues by giving property away before death can cause other problems. Heirs will be limited to the property's *tax basis* (the amount that you paid for the property with adjustments) and will lose provisions allowing a stepped-up basis in property after your death. Estate taxes may not be avoided on appreciation if the gift was structured incorrectly: for example, where you retained the right to revoke the gift or control the property. There may be liability for federal or state gift taxes, or both. A well-developed estate plan specified within a will can resolve all of these potential problems.

## Preparing a Will

You can prepare your own will. However, self-made wills usually create problems. Many words have special legal meanings. When these words are used by a layperson, the results may not be as intended. An attorney is trained to avoid the legal pitfalls that result from a do-it-yourself will. Prepared wills available for sale do not include legal advice and may not match your situation or conform with every state's laws. Laws affecting taxation and estate planning have grown increasingly complex, so using an attorney fully competent in these fields is important.

*Will preparation costs.* Fees for legal assistance vary, depending on the estate's size and the will's complexity. Most law firms do not have a set fee for preparing a will. Attorneys usually base their fees on their conference time with the testator and the time it takes to draft the will. Do not hesitate to ask an attorney for an estimate of the fee for preparing a will, preferably at the first meeting.

*Naming a personal representative.* The term *personal representative* is a generic term for the person who settles your estate. If you name someone in your will to settle your estate, you name an *executor*. If the court appoints someone to settle your estate, the person is called an *administrator*. Duties of the personal representative include:

- Offering and proving the will in probate court.
- Collecting and inventorying property in the estate.
- Paying bills, collecting debts, and filing tax returns.
- Managing the estate for as long as it is in probate.
- Defending or bringing lawsuits on behalf of the estate.
- Distributing the assets of the estate to the people legally entitled to receive them, either under the terms of the will or under the rules of intestate succession.

Select an executor with experience, sense, and attention to detail. It also helps if they can keep peace among family members. Select someone who lives nearby and can efficiently administer your estate. Ask permission and get concurrence before your final selection. Finally, select an individual who *qualifies* as a personal representative. To qualify as a personal representative in North Carolina, the person you name in your will must *not* be:

- under 18 years of age, illiterate, or a convicted felon;
- declared legally incompetent nor remain under such disability;
- a nonresident of North Carolina, unless he or she has appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate;
- a corporation not authorized to act as a personal representative in North Carolina;
- barred or have lost property rights under N.C. law;
- a person whom the clerk of superior court finds otherwise unsuitable; or
- a person who has renounced the right to as act executor.

Name alternates in the event your first choice cannot or will not serve as your personal representative.

*Special concerns.* Certain conditions or concerns warrant inclusion in your will or comprehensive estate plan:

- provisions for minor children and children born or adopted after the will is executed;
- designation of alternate beneficiaries;
- definition of the powers of the executor and trustee;
- designation of alternate executors;
- issues that may arise in case joint executors are named;
- apportioning death-related taxes;
- survivorship clauses;
- multiple marriages and children from prior marriages;
- disabled or handicapped family members;
- pending divorce;
- heavy personal or business debt;
- land owned outside North Carolina;
- long-term care;
- value of gross estate exceeding the amount sheltered from tax by the *applicable exclusion amount*;
- life insurance policies that increase the value of the taxable estate; and
- family-owned business or farming operation.

## Changing a Will

A will has no legal effect during the testator's lifetime. It is effective only at death. A will can be freely changed, and it can even be revoked. If changes need to be made, a codicil or a new will must be prepared by an attorney. A *codicil* is a legally recognized supplement to an existing will that must be executed and attested to with the same formalities as a will. If you want to make major changes to a will, it is better to revoke it and make a new one than to prepare a codicil. A will is revoked when you execute a new will or destroy an existing one. With modern software, it is usually easier to pre-